

REMARKS

Claims 1-7 remain pending in the application.

Claims 1-7 are rejected under 35 U.S.C. §112, second paragraph. Claim 1 has been amended to incorporate “a sensor associated with the electrode structure” as a recitation of intended use to overcome this rejection. Claim 4 has been amended to correct a typographical error.

Claims 1-7 are rejected under 35 U.S.C. §103(a) over Whayne et al. 6,014,581 in view of Mackey U.S. 5,931,835. Neither of the cited references, alone or in combination, teach or suggest the concurrent display of an idealized image of an electrode structure and a display of changes in the monitored surface tissue temperature over time.

Claim 1 is rejected under the doctrine of double patenting over claims 1-14 of U.S. Patent No. 6,358,245 (the ‘245 Application). However, Applicant notes that in the Response to Arguments the Examiner indicates that this rejection has been withdrawn. As Applicant indicated an intent to file a terminal disclaimer based on the ‘245 Application upon the indication of allowable subject matter (see Amendment A, filed May 29, 2003), Applicant believes the Examiner meant to indicate that the double patenting rejection based on U.S. 6,464,689 has been withdrawn. Applicant respectfully requests clarification.

Claim 1 is rejected under the doctrine of double patenting over claims 1-14 of U.S. Patent No. 6,273,886 (the ‘886 Patent) because the claims, if allowed, would improperly extend the “right to exclude.” Applicant respectfully traverses this rejection. The Examiner has not indicated how the claims in the instant application would permit Applicant to per se exclude the making, selling, or use of a device having a generator and a pumping mechanism and in which a display screen shows animated visual images indicating operation of the generator and pumping mechanism, as defined by the claims of the ‘886 Patent, in the absence, e.g., of an electrode structure to monitor a surface tissue temperature condition and a display screen that includes an idealized image of the electrode structure and a second image that displays changes in the monitored surface tissue temperature over time. Therefore, Applicant maintains that the right to exclude granted by the instant application, if allowed, could not extend the right to exclude permitted by the ‘886 Patent. The Examiner has also not indicated how the claims of the ‘886 Patent would permit Applicant to per se exclude the making, selling, or use of a device in which a sensor is associated with an electrode structure to monitor a surface tissue temperature condition and an operating system generates viewable images

on a display screen that includes an idealized image of the electrode structure and a second image that displays changes in the monitored surface tissue temperature over time, as defined by the claims of the instant application, in the absence, e.g., of a generator, a pumping mechanism, and a display screen showing animated visual images indicating operation of the generator and pumping mechanism. Therefore, Applicant maintains that the right to exclude granted by the '886 Patent could not extend the right to exclude permitted by the claims of the instant application, if allowed.

Respectfully Submitted,

By Patricia A. Limbach
Patricia A. Limbach
Registration No. 50,295

RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226

(262) 783 - 1300

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Customer No.: 26308

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